

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PIRELLI ARMSTRONG TIRE
CORPORATION RETIREE MEDICAL
BENEFITS TRUST, et, al., On Behalf of
Themselves and All Others Similarly Situated,

Plaintiffs,

vs.

HANOVER COMPRESSOR COMPANY, et al.,

Defendants.

§ Civil Action No. H-02-0410
§ (Consolidated)
§ Hon. Vanessa D. Gilmore

§ CLASS ACTION

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS

SEP 29 2003 JS

MICHAEL N. MILBY, CLERK OF COURT

HARBOR FINANCE PARTNERS,
Derivatively on Behalf of HANOVER,
COMPRESSOR CO.,

Plaintiff,

vs.

MICHAEL MCGHAN, WILLIAM
GOLDBERG, TED COLLINS, ROBERT
FURGASON, MELVYN KLEIN, MICHAEL
O'CONNOR And ALVIN SHOEMAKER,

Defendants,

-and-

HANOVER COMPRESSOR COMPANY,
a Delaware corporation,

Nominal Defendants.

Civil Action No. H-02-0761
(Consolidated)
Hon. Melinda Harmon

**UNOPPOSED MOTION TO CONSOLIDATE THE CONSOLIDATED
DERIVATIVE ACTION INTO THE CONSOLIDATED SECURITIES
ACTION FOR PURPOSES OF SETTLEMENT**

Pursuant to Federal Rule of Civil Procedure 42(a) and Rule 7.6 of the Southern District of Texas, Defendant Hanover Compressor Company, in the action styled *Pirelli Armstrong Tire Corp. Retiree Medical Benefits v. Hanover Compressor, Co., et al.* (the “Consolidated Securities Action”), respectfully moves this Court to consolidate *Harbor Finance Partners v. McGhan, et al.* (the “Consolidated Derivative Action”)¹ into the Consolidated Securities Action for Purposes of Settlement.

1. The cases that are the subject of this motion are as follows:

Abbreviated Case Name	Civil Case No.	Date Filed	Assigned Judge
<i>Pirelli Armstrong Tire Corp. v. Hanover, et al.</i>	H-02-0410 (consolidated)	February 4, 2002,	Hon. Vanessa D. Gilmore
<i>Harbor Finance Partners, et al., v. McGhan, et a..</i>	H-02-0761 (consolidated)	March 1, 2002	Hon. Melinda Harmon

2. On May 13, 2003, Hanover Compressor Company, together with the individual defendants, entered into a Memorandum of Understanding (“First Memorandum of Understanding”) with the Lead Plaintiffs in the Consolidated Securities Action, the plaintiffs in one related ERISA class action, and the plaintiffs in each of the related derivative actions except

¹ By orders dated August 19, 2002 and August 26, 2002, Judge Harmon consolidated the five Hanover-related derivative actions pending in the United States District Court for the Southern District of Texas into *Harbor Finance Partners*.

Harbor Finance Partners, setting forth the terms for an agreement in principle for settlement and dismissal of the claims raised by those actions, subject to Court approval.²

3. On July 18, 2003, Hanover Compressor Company, together with the parties to the First Memorandum of Understanding, as well as the plaintiffs in the two previously non-settling related ERISA class actions, *Angleopoulos v. Hanover, et al*, Case No. H-03-1064 and *Freeman v. Hanover, et al*, Case No. H-03-1095, entered into a First Amended Memorandum of Understanding.³ The Plaintiff in the *Harbor Finance Partners* derivative action was not a party to the First Amended Memorandum of Understanding.

4. The parties to the First Amended Memorandum of Understanding and Harbor Finance Partners have agreed in principle to, and are in the process of executing, a Second Amended and Restated Memorandum of Understanding, which reflects their intention to enter into a stipulation of settlement and seek approval to settle the above-captioned matter. This has the collective effect of settling, subject to court approval, the Consolidated Securities Action and each and every related derivative action and ERISA class action.

5. As outlined in the Second Amended and Restated Memorandum of Understanding, the settlement of the Consolidated Securities Action, the Consolidated Derivative Action, and the ERISA Class Actions involve interrelated terms and include an express cross-

² The First Memorandum of Understanding was submitted as an exhibit to *Defendants Motion to Consolidate Derivative and ERISA Class Actions Into the Consolidated Securities Action*.

³ The First Amended Memorandum of Understanding was submitted as an exhibit to *Defendants' Unopposed Motion for Consolidation of ERISA Cases Into Consolidated Securities Action for Purposes of Settlement*, which was filed on July 22, 2003.

contingency that Hanover Compressor Company may terminate any or all of the settlements if one of the settlements is not approved by the Court.⁴

6. On July 15, 2003, the Court denied *Defendants' Motion to Consolidate the Derivative and ERISA Class Actions Into the Consolidated Securities Action*, "without prejudice to re-urging."

7. On August 7, 2003, after the First Amended Memorandum of Understanding was executed by the parties therein, the Court granted the Defendants' *Unopposed Motion for Consolidation of ERISA Cases into Consolidated Securities Action for Purposes of Settlement* and consolidated the related ERISA Class Actions into the Consolidated Securities Action.⁵

8. On September 18, 2003, Harbor Finance, through its counsel, filed *Plaintiff Harbor Finance Partners' Unopposed Motion to Coordinate Its Action with the Pirelli Armstrong Consolidated Securities Action*.

9. On September 23, 2003 the Court indicated that it "is not opposed to consolidating the cases as originally proposed"⁶ when it denied *Plaintiff Harbor Finance Partners' Unopposed Motion to Coordinate Its Action with the Pirelli Armstrong Consolidated Securities Action*.

10. Consistent with the proposed settlement of the Consolidated Derivative Action, reflected in the Second Amended and Restated Memorandum of Understanding, the respective parties have agreed to consolidate the Consolidated Derivative Action into the Consolidated Securities Action, Civil Action No. H-02-0410, for Purposes of Settlement.

⁴ For a more detailed explanation of the reasons for consolidation, please see *Defendants' Motion to Consolidate Derivative and ERISA Class Actions into the Consolidated Securities Action*, attached hereto as Exhibit A.

⁵ That *Order* is attached hereto as Exhibit B.

⁶ The *Order* denying *Plaintiff Harbor Finance Partners' Unopposed Motion to Coordinate Its Action with the Pirelli Armstrong Consolidated Securities Action* is attached hereto as Exhibit C.

Based upon the foregoing reasons and the reasons set forth in *Defendants Motion to Consolidate Derivative and ERISA Class Actions Into the Consolidated Securities Action*, Hanover Compressor Company, without opposition from any party, respectfully requests that this Court grant its *Unopposed Motion to Consolidate the Consolidated Derivative Action into the Consolidated Securities Action for Purposes of Settlement*.

Dated: September 29, 2003

Respectfully submitted,

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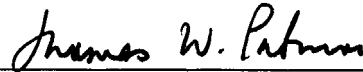
I, Kevin Abikoff, hereby certify that I and attorneys under my supervision discussed the foregoing motion with counsel for each of the parties in the above-captioned matters, and that they did not oppose the relief sought by this motion.

Dated: September 29, 2003

Kevin T. Abikoff
Kevin T. Abikoff *cc TWP by memo*

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing *Unopposed Motion to Consolidate the Consolidated Derivative Action into the Consolidated Securities Action for Purposes of Settlement* were served by U.S. Mail upon the counsel listed below this 29th day of September, 2003.



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ANN ANGLEOPOULOS, On Behalf of Herself
And All Others Similarly Situated,

Plaintiffs,

vs.

HANOVER COMPRESSOR COMPANY,
MICHAEL J. MCGHAN, MICHAEL A.
O'CONNOR, CHAD C. DEATON, and
UNKNOWN FIDUCIARY DEFENDANTS 1-100,

Defendants.

Civil Action No.
H-03-1064
Hon. Melinda Harmon

JOYCE FREEMAN, On Behalf of Herself and All
Others Similarly Situated,

Plaintiffs,

vs.

HANOVER COMPRESSOR COMPANY,
MICHAEL J. MCGHAN, MICHAEL A.
O'CONNOR, CHAD C. DEATON, and
UNKNOWN FIDUCIARY DEFENDANTS 1-100,

Defendants.

Civil Action No.
H-03-1095
Hon. Lynn N. Hughes

HENRY DUNCAN KIRKLEY, On Behalf of
Himself, All Others Similarly Situated and
The Hanover Companies Retirement
Savings Plan,

Plaintiffs,

vs.

HANOVER COMPANIES, MICHAEL J.
MCGHAN, WILLIAM S. GOLDBERG and
MICHAEL A. O'CONNOR,

Defendants.

Civil Action No.
H-03-1155
Hon. David Hittner

ANN ANGLEOPOULOS, On Behalf of Herself
And All Others Similarly Situated,

Plaintiffs,

vs.

HANOVER COMPRESSOR COMPANY,
MICHAEL J. MCGHAN, MICHAEL A.
O'CONNOR, CHAD C. DEATON, and
UNKNOWN FIDUCIARY DEFENDANTS 1-100,

Defendants.

Civil Action No.
H-03-1064
Hon. Melinda Harmon

JOYCE FREEMAN, On Behalf of Herself and All
Others Similarly Situated,

Plaintiffs,

vs.

HANOVER COMPRESSOR COMPANY,
MICHAEL J. MCGHAN, MICHAEL A.
O'CONNOR, CHAD C. DEATON, and
UNKNOWN FIDUCIARY DEFENDANTS 1-100,

Defendants.

Civil Action No.
H-03-1095
Hon. Lynn N. Hughes

HENRY DUNCAN KIRKLEY, On Behalf of
Himself, All Others Similarly Situated and
The Hanover Companies Retirement
Savings Plan,

Plaintiffs,

vs.

HANOVER COMPANIES, MICHAEL J.
MCGHAN, WILLIAM S. GOLDBERG and
MICHAEL A. O'CONNOR,

Defendants.

Civil Action No.
H-03-1155
Hon. David Hittner

**DEFENDANTS' MOTION TO CONSOLIDATE DERIVATIVE AND ERISA CLASS
ACTIONS INTO THE CONSOLIDATED SECURITIES ACTION**

Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure and Rule 7.6 of the Southern District of Texas, the named defendants in *Pirelli Armstrong Tire Corp. Retiree Medical Benefits Trust, et al. v. Hanover Compressor Co.* (the "Consolidated Securities Action"), *Harbor Finance Partners v. McGhan, et al.* (the "Consolidated Derivative Action"), and *Angleopoulos v. Hanover, et al.*, *Kirkley v. Hanover, et al.* and *Freeman v. Hanover, et al.* (collectively, the "ERISA Class Actions"), move to consolidate the Consolidated Derivative Action and the ERISA Class Actions into the Consolidated Securities Action (collectively, the Consolidated Derivative Action, the ERISA Class Actions, and the Consolidated Securities Action are referred to as the "Actions").

Hanover Compressor Company ("Hanover Compressor"), together with the individual defendants, have entered into a Memorandum of Understanding ("MOU") with representative Plaintiffs' Counsel for the Consolidated Derivative Action, the ERISA Class Actions and the Consolidated Securities Action (collectively, "Settling Plaintiffs' Counsel") pursuant to which the parties to the MOU will enter into a Stipulation of Settlement and seek this Court's approval to settle the Actions with prejudice. The MOU is attached hereto as Exhibit A. The instant motion is unopposed by each of the Settling Plaintiffs' Counsel.¹ As is reflected in the MOU, the proposed settlement of the Actions involves inter-related terms and includes an express

¹ Eight Plaintiffs' counsel and eight Defendants' counsel have agreed to the MOU. Three Plaintiffs' counsel have not, and as stated in the Certificate of Conference, they are opposed to the disposition of this motion.

cross-contingency that Hanover Compressor may terminate any or all of the settlements if one of the settlements is not approved by the Court.

As set forth in more detail below, the Actions should be consolidated, in the interests of avoiding unnecessary costs, delay and confusion because they involve common questions of fact and law, and because of the inter-related nature of the settlements of the Actions.

BACKGROUND

The cases that are the subject of this motion are as follows:

Abbreviated Case Name	Civil Case No.	Date Filed	Assigned Judge
<i>Pirelli Armstrong Tire Corp. v. Hanover, et al.</i>	H-02-0410	February 4, 2002	Hon. Vanessa D. Gilmore
<i>Harbor Finance Partners v. McGhan, et al.</i>	H-02-0761	April 10, 2002	Hon. Melinda Harmon
<i>Angleopoulos v. Hanover, et al.</i>	H-03-1064	March 26, 2003	Hon. Melinda Harmon
<i>Freeman v. Hanover, et al.</i>	H-03-1095	March 31, 2003	Hon. Lynn N. Hughes
<i>Kirkley v. Hanover, et al.</i>	H-03-1155	April 4, 2003	Hon. David Hittner

Beginning on and after February 4, 2002, more than a dozen putative class actions were filed in this Court on behalf of stockholders of Hanover Compressor. These actions generally alleged violations of the federal securities laws arising from the purported misreporting by Hanover Compressor of certain financial information, resulting in Hanover Compressor restating certain financial results in reports that it filed with the United States Securities and Exchange Commission. By Orders dated March 21, 2002 and May 17, 2002, the Court consolidated the then-pending related putative class action securities lawsuits, pursuant to Rule 42(a) and Local Rule 7.6, into the *Pirelli* action. By Order dated December 31, 2002, the Court confirmed that

actions filed after its March 21, 2002 Order were automatically consolidated into the *Pirelli* action.

By orders dated August 19, 2002 and August 26, 2002, Judge Harmon consolidated the five derivative actions pending in the United States District Court for the Southern District of Texas into *Harbor Financial Partners v. McGhan, et al.* These actions emerge from the same core facts as those involved in the Consolidated Securities Action. That is, they generally assert that certain present or former directors of Hanover Compressor violated fiduciary duties to shareholders due to their actions or inaction with respect to the transactions and disclosures ultimately restated by the Company.

Most recently, the ERISA Class Actions were filed against Hanover Compressor and certain of its officers and directors seeking relief based upon the Employee Retirement Income Security Act ("ERISA"). These actions – like the Consolidated Securities Action and the Consolidated Derivative Action – emerge from the same underlying facts: the alleged misstatement (and ultimate restatement) of Hanover Compressor's financial results.

REASONS AND AUTHORITY FOR CONSOLIDATION

Rule 42(a) of the Federal Rules of Civil Procedure provides that:

When actions involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

This Court previously concluded that consolidation of the securities cases was warranted under Rule 42(a). Judge Harmon similarly determined that consolidation of the derivative actions was appropriate as involving common factual and legal issues and was beneficial for the administrative convenience of the Court and the parties. The next logical step of consolidating

the Consolidated Securities Action with the Consolidated Derivative Action and the ERISA Class Actions should now be taken.

Applying the analogous criteria of Section 1407, the MDL panel *In re Enron Corp. Secs, Derivative & ERISA Litig.*, 196 F. Supp. 2d 1375, 1376 (2002), concluded:

Whether the actions be brought by securities holders seeking relief under the federal securities laws, shareholders suing derivatively on behalf of Enron, or participants in Enron retirement savings plans suing for violations of the Employee Retirement Income Security Act of 1974, all actions can be expected to focus on a significant number of common events, defendants, and/or witnesses. Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings (especially with respect to questions of class certification), and conserve the resources of the parties, their counsel and the judiciary.

The rationale employed by the MDL panel in the collection of Enron matters is amplified in the instant setting where not only are the underlying matters related in the manner posited by the MDL panel, but such matters are inextricably linked through the terms of the proposed settlement.

The actions (1) have the same nucleus of facts, (2) involve many of the same parties, (3) request and receive, in the MOU, interrelated relief, and (4) are included in the same MOU, whereby enforceability of the MOU is contingent upon settlement of each of the three Actions.

The common fact and law questions, as well as the overlap in the identity of the parties, are apparent from the face of the complaints in each action. The Consolidated Securities Action alleges violations of the federal securities laws arising from "false financial statements and other false and misleading statements about the Company's operating performance" based in substantial part on the restatement of revenue arising from the Hampton Roads transaction. In addition to Hanover Compressor, the complaints typically name as individual defendants, Michael O'Connor, Michael McGhan, and William Goldberg, officers or directors alleged to

have directly or indirectly participated in the challenged conduct. In the Consolidated Derivative Action, these same individuals are again named, in addition to other directors and officers alleged to have breached obligations to the shareholders by, among other things, violating the federal securities laws. The ERISA actions seek to remedy the particular effect of the foregoing alleged conduct in the context of fiduciary obligations to Hanover Compressor's 401K plan participants.

The MOU provides further compelling support for the notion that the Actions are most appropriately consolidated. First, the relief to be provided under the MOU in the Actions is inextricably linked. The MOU provides for the creation of a single common fund from which stock will be withdrawn to resolve both the Consolidated Securities Action and the Consolidated Derivative Action and which will be used, in part, to provide relief in the ERISA Actions. Similarly, the MOU provides that the cash portion of the settlement will be placed into a common fund from which relief under the Consolidated Securities Action and the ERISA Actions will be paid. In addition, both the Consolidated Securities Action and the Consolidated Derivative Action point to the significant governance changes to be made by Hanover Compressor as a basis for ultimate approval of the proposed settlements.

Second, the MOU explicitly provides that the termination of the Actions is cross-contingent on the resolution of each of them in that the failure of any settlement to receive approval allows Hanover Compressor, at its election, to terminate the other settlements.

CONCLUSION

Because the Actions share a common nucleus of facts, involve many of the same parties, request and receive similar relief pursuant to the MOU, and are included in the same MOU whereby enforcement of each of the settlements is contingent upon approval of all three

settlements, the Defendants respectfully request that this Court grant their Motion to Consolidate the Consolidated Derivative Action and the ERISA Class Actions into the Consolidated Securities Case for all purposes pursuant to Rule 42(a) of the Federal Rules of Civil Procedure and Rule 7.6 of the Local Rules.

DATED: May 13, 2003

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Tom Paterson" followed by some less legible characters and a closing parenthesis.

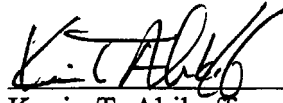

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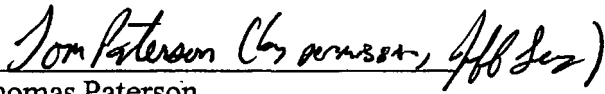
I hereby certify that I, Kevin T. Abikoff, of Hughes Hubbard & Reed LLP, provided a draft of the foregoing Motion to Consolidate to counsel for Plaintiffs in each of the above-captioned actions for their review and input. After conferring with counsel for Plaintiffs, I received no opposition from each of the Settling Plaintiffs' Counsel regarding the disposition of this motion. The following counsel do not agree about the disposition of this motion: Richard B. Brualdi (counsel for Harbor Finance Partners; H-02-0761); Evan Smith (counsel for Joyce Freeman; H-03-1095); and Richard S. Schiffrin (counsel for Ann Angleopoulos; H-03-1064).

Dated: May 13, 2003

 (with permission, by 
Kevin T. Abikoff

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion and proposed order was served via certified mail to the counsel listed below on this 13th day of May, 2003:


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B

FAX FROM: 713-250-5441 USDC-SDTX : 9-713-654-3392 PAGE: 1 OF 3 CONTROL: #040546-CV

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

MICHAEL N. MILBY
CLERK OF COURT
P.O. BOX 61010
HOUSTON, TEXAS 77208

www.txs.uscourts.gov

08/08/03

To: Thomas W Paterson (aty)

Re: Notice of Entry of Order or Judgment

Enclosed Order or Judgment entered in:

case number: 4:03-cv-01064

instrument number: 16

If after three attempts this fax fails, then we will print this notice and mail it to you. For questions, please call (713) 250-5768.

Number of pages including cover sheet: 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PIRELLI ARMSTRONG TIRE
CORPORATION RETIREE MEDICAL
BENEFITS TRUST, On Behalf of Itself and
All Others Similarly Situated,

Plaintiffs,

vs.

HANOVER COMPRESSOR COMPANY,
MICHAEL J. MCGHAN, WILLIAM S.
GOLDBERG and MICHAEL A. O'CONNOR

Defendants.

CA H-02-410
CIVIL ACTION NO. H-03-1095
(Consolidated)

(Hon. Vanessa D. Gilmore)

CA H-03-1064 ✓
CLASS ACTION

United States Courts
Southern District of Texas
ENTERED

AUG 07 2003

[Proposed] ORDER

Michael N. Milby, Clerk of Court

Pending before the Court is the Unopposed Motion for Consolidation of ERISA Cases into Consolidated Securities Action for Purposes of Settlement, filed July on 22 2003.

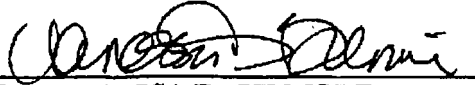
IT IS HEREBY ORDERED that the following Civil Action Numbers are consolidated into the instant case, *Pirelli Armstrong Tire Corp. Retiree Medical Benefits Trust v. Hanover Compressor Co.*, Civil Action No. H-02-0410:

Abbreviated Case Name	Civil Case No.	Date Filed	Assigned Judge
<i>Angleopoulos v. Hanover, et al.</i>	H-03-1064	March 26, 2003	Hon. Melinda Harmon
<i>Freeman v. Hanover, et al.</i>	H-03-1095	March 31, 2003	Hon. Lynn N. Hughes
<i>Kirkley v. Hanover, et al.</i>	H-03-1155	April 4, 2003	Hon. David Hittner

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The Clerk shall enter this Order and provide a copy to all parties.

SIGNED on this 1st day of August, 2003.


HON. VANESSA D. GILMORE
UNITED STATES DISTRICT JUDGE

TRUE COPY I CERTIFY
ATTEST:

MICHAEL N. MILBY, Clerk of Court

By  Deputy Clerk

Motion to Consolidate
H-03-1095

C

FAX

FROM: 713-250-5441 USDC-SDTX TO: 713-654-3392 PAGE: 1 OF 2 CONTROL: #050375-20

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

MICHAEL N. MILBY
CLERK OF COURT
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09/23/03

To: Thomas W Paterson (aty)

Re: Notice of Entry of Order or Judgment

Enclosed Order or Judgment entered in:

case number: 4:02-cv-00410

instrument number: 99

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Number of pages including cover sheet: 2

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
ENTERED

SEP 23 2003

Michael N. Milby, Clerk of Court

PIRELLI ARMSTRONG TIRE CORP.
RETIREE MEDICAL BENEFITS

versus

HANOVER COMPRESSOR CO., ET AL.

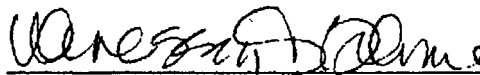
§
§
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CIVIL ACTION NO. H-02-0410

ORDER

IT IS HEREBY ORDERED that Plaintiff Harbor Finance Partners' Unopposed Motion to Coordinate Its Action With the Pirelli Armstrong Consolidated Securities Action (**Instrument No. 98**) is **DENIED**. However, the Court is not opposed to consolidating the cases as originally proposed. A "coordination" creates too many problems for the two courts.

Signed on this 22nd day of September, 2003, at Houston, Texas.



VANESSA D. GILMORE
UNITED STATES DISTRICT JUDGE

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